

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
WILLIAM A. GROSS CONSTRUCTION
ASSOCIATES, INC., 07-CV-10639 (LAK)(AJP)

Plaintiff,

-against-

**ANSWER OF FIFTH-PARTY
DEFENDANT FUTURE TECH
CONSULTANTS OF NEW
YORK, INC.**

AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Defendant.

-----X
AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Third-Party Plaintiff,

-against-

CAULDWELL WINGATE COMPANY, LLC,

Third-Party Defendant.

-----X
CAULDWELL WINGATE COMPANY, LLC,

Fourth-Party Plaintiff,

-against-

DORMITORY AUTHORITY OF THE STATE
OF NEW YORK,

Fourth-Party Defendant,

-----X

Caption continued on next page

Fifth-Party Plaintiff,

-against-

A. WILLIAMS TRUCKING & BACKHOE
TRENCHING, INC., ASPRO MECHANICAL
CONTRACTORS, INC., BEAUBOIS
CANADA, INC., BOVIS LEND LEASE LMB, INC.,
CAN SURETY CORPORATION D/B/A AMERICAN
CASUALTY COMPANY, INC., ENCLOS
CORPORATION, FIVE STAR ELECTRIC
CORPORATION, FUTURE TECH CONSULTANTS
OF NEW YORK, INC., HERITAGE AIR SYSTEMS
INC., HUGH O’KANE ELECTRIC CO., LLC,
MATERIALS TESTING LAB, INC., PYRAMID
FIRE PROTECTION, INC., RAFAEL VINOY
ARCHITECTS P.C., SMI-OWEN STEEL
COMPANY, INC., STONEWALL CONTRACTING
CORPORATION, TRACTEL LTD. SWINGSTAGE
DIVISION,

Fifth-Party Defendants.

-----X

Fifth-Party Defendant, FUTURE TECH CONSULTANTS OF NEW YORK,
INC., by its attorney, Krieg Associates, P.C., answers the fifth-party Complaint as follows:

1.

Denies knowledge or information sufficient to form a belief as to the truth
of the allegations contained in paragraphs 1 through 12 and 14 through 92.

2.

Denies the allegations contained in paragraph 93 except admits a contract
was entered into and respectfully refers that contract to the Court for its terms, conditions, and
legal effect, if any.

3.

Denies the allegations contained in paragraph 94.

4. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraphs 95 through 100.

WITH RESPECT TO THE SECOND CLAIM

5. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 100 with the same force and effect as though fully set forth herein at length.

6. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraphs 102 through 105.

WITH RESPECT TO THE THIRD CLAIM

7. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 105 with the same force and effect as though fully set forth herein at length.

8. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraph 107.

WITH RESPECT TO THE FOURTH CLAIM

9. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 107 with the same force and effect as though fully set forth herein at length.

10. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraph 109 through 114.

WITH RESPECT TO THE FIFTH CLAIM

11. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 114 with the same force and effect as though fully set forth herein at length.

12. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraphs 116 through 119.

13. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 119 with the same force and effect as though fully set forth herein at length.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 121.

WITH RESPECT TO THE SEVENTH CLAIM

15. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 121 with the same force and effect as though fully set forth herein at length.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 123 through 128.

WITH RESPECT TO THE EIGHTH CLAIM

17. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 128 with the same force and effect as though fully set forth herein at length.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 130 through 133.

WITH RESPECT TO THE NINTH CLAIM

19. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 133 with the same force and effect as though fully set forth herein at length.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 135.

WITH RESPECT TO THE TENTH CLAIM

21. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 135 with the same force and effect as though fully set forth herein at length.

of the allegations contained in paragraphs 137 through 141.

WITH RESPECT TO THE ELEVENTH CLAIM

23. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 141 with the same force and effect as though fully set forth herein at length.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 143 through 146.

WITH RESPECT TO THE TWELFTH CLAIM

25. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 146 with the same force and effect as though fully set forth herein at length.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 148.

WITH RESPECT TO THE THIRTEENTH CLAIM

27. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 148 with the same force and effect as though fully set forth herein at length.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 150 through 154.

WITH RESPECT TO THE FOURTEENTH CLAIM

29. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 154 with the same force and effect as though fully set forth herein at length.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 156.

31. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 156 with the same force and effect as though fully set forth herein at length.

32. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraphs 158 through 162.

WITH RESPECT TO THE SIXTEENTH CLAIM

33. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 162 with the same force and effect as though fully set forth herein at length.

34. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraphs 164 through 167.

WITH RESPECT TO THE SEVENTEENTH CLAIM

35. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 167 with the same force and effect as though fully set forth herein at length.

36. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraph 169.

WITH RESPECT TO THE EIGHTEENTH CLAIM

37. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 169 with the same force and effect as though fully set forth herein at length.

38. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraphs 171 through 175.

WITH RESPECT TO THE NINETEENTH CLAIM

39. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 175 with the same force and effect as though fully set forth herein at length.

40. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraphs 177 through 180.

WITH RESPECT TO THE TWENTIETH CLAIM

41. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 180 with the same force and effect as though fully set forth herein at length.

42. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraph 182.

WITH RESPECT TO THE TWENTY-FIRST CLAIM

43. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 182 with the same force and effect as though fully set forth herein at length.

44. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraphs 184 through 188.

WITH RESPECT TO THE TWENTY-SECOND CLAIM

45. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 188 with the same force and effect as though fully set forth herein at length.

46. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraphs 190 through 193.

WITH RESPECT TO THE TWENTY-THIRD CLAIM

47. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 193 with the same force and effect as though fully set forth herein at length.

48. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraph 195.

WITH RESPECT TO THE TWENTY-FOURTH CLAIM

49. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 195 with the same force and effect as though fully set forth herein at length.

50. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraphs 197 through 201.

WITH RESPECT TO THE TWENTY-FIFTH CLAIM

51. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 201 with the same force and effect as though fully set forth herein at length.

52. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraphs 203 through 206.

WITH RESPECT TO THE TWENTY-SIXTH CLAIM

53. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 206 with the same force and effect as though fully set forth herein at length.

54. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraph 208.

WITH RESPECT TO THE TWENTY-SEVENTH CLAIM

55. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 208 with the same force and effect as though fully set forth herein at length.

56. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraphs 210 through 215.

WITH RESPECT TO THE TWENTY-EIGHTH CLAIM

57. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 215 with the same force and effect as though fully set forth herein at length.

of the allegations contained in paragraphs 217 through 220.

WITH RESPECT TO THE TWENTY-NINTH CLAIM

59. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 220 with the same force and effect as though fully set forth herein at length.

60. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 222.

WITH RESPECT TO THE THIRTIETH CLAIM

61. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 222 with the same force and effect as though fully set forth herein at length.

62. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 224 through 229.

WITH RESPECT TO THE THIRTY-FIRST CLAIM

63. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 229 with the same force and effect as though fully set forth herein at length.

64. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 231 through 234.

WITH RESPECT TO THE THIRTY-SECOND CLAIM

65. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 234 with the same force and effect as though fully set forth herein at length.

66. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 236.

67. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 236 with the same force and effect as though fully set forth herein at length.

68. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraphs 238 through 242.

WITH RESPECT TO THE THIRTY-FOURTH CLAIM

69. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 242 with the same force and effect as though fully set forth herein at length.

70. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraphs 244 through 247.

WITH RESPECT TO THE THIRTY-FIFTH CLAIM

71. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 247 with the same force and effect as though fully set forth herein at length.

72. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraph 249.

WITH RESPECT TO THE THIRTY-SIXTH CLAIM

73. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 249 with the same force and effect as though fully set forth herein at length.

74. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraphs 251 through 255.

WITH RESPECT TO THE THIRTY-SEVENTH CLAIM

75. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 255 with the same force and effect as though fully set forth herein at length.

76. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 257.

WITH RESPECT TO THE THIRTY-EIGHTH CLAIM

77. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 257 with the same force and effect as though fully set forth herein at length.

78. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 259 through 263.

WITH RESPECT TO THE THIRTY-NINTH CLAIM

79. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 263 with the same force and effect as though fully set forth herein at length.

80. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 265 through 267.

WITH RESPECT TO THE FORTIETH CLAIM

81. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 267 with the same force and effect as though fully set forth herein at length.

82. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 269.

WITH RESPECT TO THE FORTY-FIRST CLAIM

83. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 269 with the same force and effect as though fully set forth herein at length.

84. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 271 through 276.

WITH RESPECT TO THE FORTY-SECOND CLAIM

85. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 276 with the same force and effect as though fully set forth herein at length.

86. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 278.

WITH RESPECT TO THE FORTY-THIRD CLAIM

87. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 278 with the same force and effect as though fully set forth herein at length.

88. Denies the allegations contained in paragraph 280 except admits a contract was entered into and respectfully refer that document to the Court for its terms, conditions, provisions and legal effect, if any.

89. Denies the allegations contained in paragraphs 281 through 283.

WITH RESPECT TO THE FORTY-FOURTH CLAIM

90. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 283 with the same force and effect as though fully set forth herein at length.

91. Denies the allegations contained in paragraph 285

WITH RESPECT TO THE FORTY-FIFTH CLAIM

93. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1 through 285 with the same force and effect as though fully set forth herein at length.

94. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 287 through 289.

WITH RESPECT TO THE FORTY-SIXTH CLAIM

95. Fifth Party Defendant repeats and reiterates its answers to paragraphs 1

through 289 with the same force and effect as though fully set forth herein at length.

96. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 291 through 292.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

97. The complaint fails to allege facts sufficient to constitute a cause of action against fifth-party defendant, FUTURE TECH CONSULTANTS OF NEW YORK, INC..

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

98. The complaint alleges no facts constituting any liability by answering fifth-party defendant, FUTURE TECH CONSULTANTS OF NEW YORK, INC. or any obligations arising out of any obligations properly attributable to answering fifth-party defendant, FUTURE TECH CONSULTANTS OF NEW YORK, INC .

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

99. The fifth-party actions against answering defendant to the extent they rely upon the Doctrines of Indemnification or Contribution are without enforceability and are also barred by the Economic Loss Rule and are lacking in the necessary contract privity either in common law or by statutory and contract law.

WHEREFORE, fifth party defendant, FUTURE TECH CONSULTANTS OF NEW YORK, INC., demands judgment dismissing the complaint, together with the costs and disbursements of this action.

Dated: Huntington, New York
July 23, 2008

Yours, etc.

by: 

Marc S. Krieg, Esq. (MSK3745)

Attorney for Fifth-Party Defendant, FUTURE
TECH CONSULTANTS OF NEW YORK, INC.
5 Heather Court
Dix Hills, NY 11746
(631) 499-8409
(631) 493-0763

TO: MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Fourth-Party Defendant and Fifth-Party
Plaintiff Dormitory Authority of the State of New York
100 Church Street
New York, NY 10007

A. WILLIAMS TRUCKING & BACKHOE TRENCHING, INC.
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Albany, NY 12231

AMERICAN CASUALTY COMPANY OF READING, PA
c/o CNA Surety Corporation
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Chicago, IL 60685-1303
Attn: Raymond M. Lemming, P.E.

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c/o Department of State of the State of New York

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MATERIALS TESTING LAB, INC.
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PYRAMID FIRE PROTECTION, INC.
c/o Department of State of the State of New York

39-LAK-AJP Document 54
One Commerce Plaza
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Albany, NY 12231

Filed 07/27/2008

RAFAEL VINOLY ARCHITECTS, P.C.

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Albany, NY 12231

SMI-OWEN STEEL COMPANY, INC.

c/o Department of State of the State of New York
One Commerce Plaza
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Albany, NY 12231

STONEWALL CONTRACTING CORPORATION

c/o Department of State of the State of New York
One Commerce Plaza
99 Washington Avenue
Albany, NY 12231

TRACTEL, INC.

c/o Department of State of the State of New York
One Commerce Plaza
99 Washington Avenue
Albany, NY 12231

Joan Treubig, being duly sworn, deposes and says that I am not a party to this action; that I am over eighteen (18) years of age; that I reside at 20 Saratoga Street, Commack, New York; that on the 28 day of July 2008, I served the within Answer upon:

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
100 Church Street
New York, NY 10007

A. WILLIAMS TRUCKING & BACKHOE TRENCHING, INC.
c/o Department of State of the State of New York
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AMERICAN CASUALTY COMPANY OF READING, PA
c/o CNA Surety Corporation
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Attn: Raymond M. Lemming, P.E.

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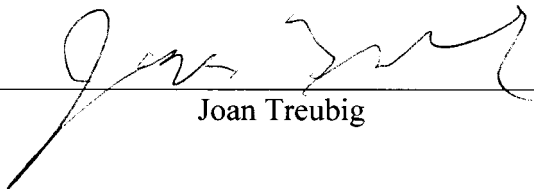
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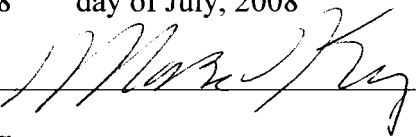
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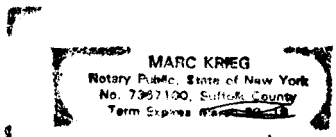
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the address designated by the said attorneys for that purpose by depositing a true copy of the same enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.


Joan Treubig

Sworn to before me this
28 day of July, 2008



12/31/10